IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

RSA.No.122 of 1996.

Date of Decision :11th September,2007..

State of H.P. …Appellant.

Versus:

M/s Kumar Brothers. …Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the appellant: Mr.Ashok Chaudhary, Addl. Advocate General.

For Respondent. Mr.Neeraj Gupta, Advocate with Ms. Charu Gupta, Advocate.

Sanjay Karol, J (Oral).

The present appeal arises out of the judgment and decree dated 14th June, 1995 passed by the Addl. District Judge, Shimla in Civil Appeal No.75-S/13 of 1991 upholding the judgment and decree dated 29th March, 1990 passed by Sub Judge, Ist Class, Rampur Bushahr, Shimla in Suit No.63/1 of 1988.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

For the purpose of convenience, the appellant herein is referred to as defendant and the respondent is referred to as the plaintiff.

The brief facts giving rise to the filing of the present appeal are as under:

On 5th November, 1985 in an open auction, the plaintiff purchased the rights to extract the timber out of lot No.10/81-82 for a sum of Rs.81,000/-. The said amount was paid within time. The plaintiff, a registered dealer under the H.P. General Sales Tax Act, 1968 (hereinafter referred to as the Act) submitted form 'D' with the defendant towards its sales tax liability. The same was not accepted and the plaintiff was compelled to deposit a sum of Rs. 8,910/- as sales tax on the transaction. The defendant also did not allow the plaintiff to lift 285 logs from the forest resulting into further losses. Consequently, the plaintiff filed a suit for recovery of a sum of Rs.36,000/-.

After examining the statements of the witnesses and the material on record, the trial Court decreed the suit. The defendant assailed the said finding by way of an appeal which was dismissed vide decree and judgment which is a subject matter of the present appeal.

The appeal has been admitted on the following substantial questions of law:

1.Whether the conditions of sale accepted by both the parties are binding on the appellant and respondent.?

2.Whether the courts below have not appreciated the conditions of sale in right perspective.?

3.Whether the respondent is not entitled for interest on the deposited amount @ 18% per annum.?

4.Whether mere misreading of oral as well as documentary evidence on record itself amounts to substantial question of law?

Learned counsel for the appellant has invited my attention to the terms and conditions of the auction (Ext.D-1). For the purpose of adjudication of the present appeal, Clause-IV of the same is reproduced as under:

"Bid shall be offered in lump-sum for the entire timber excluding sales tax, Sale tax as leviable under the H.P. General Sales tax Act shall be recovered along with the sale price. Bid once offered shall remain open for 30 days from the date of auction. Any other taxes, levies payable shall be paid by the successful purchaser."

Both the courts below have returned the finding of fact that the timber (285 logs) was illegally detained by the defendant and thus the plaintiff was entitled to the amount claimed for. This finding of fact is not to be interfered with and in fact is not being seriously assailed by the learned counsel for the defendant.

The contention of the learned counsel for the defendant, however, is that recovery of Rs.9,100/- towards sales tax is not justified as the plaintiff was liable to pay the

same in terms of Clause-IV. Both the courts below have held that the plaintiff and defendant are the registered dealers under the provisions of the Act. A combined reading of the provisions of Section 6 sub Section (3) (a) (ii) and Section 19 sub section (2) of the Act would show that in the case of interse sales between the two registered dealers, the requirement of payment of tax is not mandatory if the form as stipulated under the Act is submitted. It is not in dispute that the said form being form 'D' had been submitted by the plaintiff within time to the defendant. In fact it is also borne out from the record. However, the same was not accepted by the defendant and, therefore, the plaintiff was compelled to pay the amount of tax.

In my view, the finding returned by the court below is borne out from the record and are well reasoned and I see no reason to interfere with the same. The questions of law are answered accordingly.

The reasoning is based on the cogent material on record and correct appreciation of facts and law. The appeal is accordingly dismissed with no order as to costs.

(Sanjay Karol),
Judge.

September 11, 2007(R)